

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-35355-2022
Reserved on:09.08.2022
Pronounced on: 08.09.2022

Nitin Goyal ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Vinod Ghai, Sr. Advocate with
Mr. Edward Augustine George, Advocate
for the petitioner.

Mr. Rajat Gautam, DAG, Haryana

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
160	30.04.2019	Civil Line Sonipat, District Sonipat	420 (sections 467, 468, 471, 120-B IPC & 132 GST Act added lateron)

1. The petitioner apprehending arrest in the FIR captioned above has come up before this Court under Section 438 CrPC seeking anticipatory bail.

2. In paragraph 23 of the bail petition, the accused declares that he has no criminal antecedents.

3. The allegations are of fraud related to GST invoices and getting credits to the extent of Rs. 1,10,35,701/- (Rs. One crore ten lacs, thirty-five thousand seven hundred and one).

4. Mr. Vinod Ghai, Ld. Senior Advocate appearing for the petitioner had argued that the primary evidence is by way of the confession made by Hemraj Ahuja, which is not admissible against the petitioner because it was not inculpatory, and that the custodial investigation would serve no purpose whatsoever, and the pre-trial incarceration would cause an irreversible injustice to the petitioner and family.

5. Ld. counsel representing the State opposes bail and seeks custodial interrogation to unearth the scam and to rule out the involvement of government officials.

REASONING:

6. The allegations against the petitioner are of cheating the State by claiming input credit through fake invoices by using fake addresses of the firms created through different proprietors and defrauded the State to the extent of more than Rs. One crore. A perusal of the FIR and investigation points out towards the existence of a prima facie case against the petitioner.

7. When the allegations against an accused are of cheating and the amount involved is massive, like the present case, where it is more than rupees one crore, the investigating agency's demand for custodial interrogation is based on the following judicial precedents, which bind all the investigating agencies.

8. In Jai Prakash Singh v. State of Bihar and another (2012) 4 SCC 379, Hon'ble Supreme Court holds,

[19]. Parameters for grant of anticipatory bail in a serious offence are required to be satisfied and further while granting such relief, the court must record the reasons therefor. Anticipatory bail can be granted only in exceptional circumstances where the court is prima facie of the view that the applicant has falsely been enrope in the crime and would not misuse his liberty. [See D.K. Ganesh Babu v. P.T. Manokaran (2007) 4 SCC 434, State of Maharashtra v. Mohd. Sajid Husain Mohd. S. Husain (2008) 1 SCC 213 and Union of India v. Padam Narain Aggarwal (2008) 13 SCC 305].

9. In State rep. by CBI v. Anil Sharma, (1997) 7 SCC 187, Hon'ble Supreme Court holds,

[6]. We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation oriented than questioning a suspect who is well ensconded with a favourable order under Section 438 of the code. In a case like this effective interrogation of suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Succession such interrogation would elude if the suspected person knows that he is well protected and insulted by a pre-arrest bail during the time he interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third degree methods need not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The court has to presume that responsible Police Officers would conduct themselves in task of disinterring offences would not conduct themselves as offenders.

9. The petitioner took enormous advantage of the loopholes and defects in the GST software, the system put in place, and the lack of efficient standards to ensure that it becomes impossible to misuse the scheme.

10. The argument that the co-accused was granted bail and even the petitioner is entitled to bail on parity, is not sustainable because the specific allegations against the co-accused Shrawan were that a sum of rupees ten lacs had fallen to his share and he had undergone custody of five months. Thus, the bail granted to the co-accused was in an application filed under section 439 CrPC, (CRM-M-26610-2022), and the petitioner had undergone custody of five months viz-a-viz the alleged amount of Rs. Ten lacs. Thus, the petitioner is not entitled to bail on parity.

11. Given the nature of allegations, custodial interrogation is required. An analysis of the allegations and evidence collected does not warrant the grant of bail to the petitioner.

12. Without commenting on the case's merits, in the facts and circumstances peculiar to this case, and for the reasons mentioned above, the petitioner fails to make a case for bail at this stage.

13. Any observation made hereinabove is neither an expression of opinion on the case's merits, neither the court taking up regular bail nor the trial Court shall advert to these comments.

Petition dismissed in aforesaid terms. All pending applications, if any, stand disposed.

(ANOOP CHITKARA)
JUDGE

08.09.2022
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Whether speaking/reasoned: Yes
Whether reportable: No.